89-619

Supreme Court, U.S.
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OCT 16 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

FRANK J. CAMOSCIO,

PETITIONER,

VS.

MARGARET CROWLEY,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A. DOES THE DOCTRINE OF RES JUDICATA APPLY IF THE PETITIONER WAS DENIED DUE PROCESS BY LACK OF TIME TO PRESENT FAVORABLE ARGUMENTS DUE TO IMPROPER SERVICE.

B. DOES THE FEDERAL COURT HAVE JURISDICTION TO HEAR THIS CASE.

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B. DOES THE FEDERAL COURT HAVE JURISDICTION TO HEAR THIS CASE. . . . i

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PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Petitioner, Frank J. Camoscio, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered in the above-entitled cause on July 26, 1989.

I.

OPINION BELOW

The memorandum opinion of the Court of Appeals is attached as Appendix A. The lower federal court's decisions for the Massachusetts District is located in Appendix B and

* * *

the Appeals Court decision for the Commonwealth of Massachusetts is located in Appendix C. The supreme judicial court of Massachusetts denied further appellate review in this case.

II.

JURISDICTION

The opinion of the Court of Appeals for the First Circuit was filed on July 26, 1989. The jurisdiction of this Court is invoked pursuant to 62 Stat. 928, 28 U.S.C. § 1254(1).

III.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment, Section 1 of the United States Consti-

tution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

IV.

STATEMENT OF FACTS

This case arose because Margaret Crowley, the respondent wrote a false and malicious statement against the petitioner on June 14, 1985. The petitioner sought relief through the state court system. The evening prior to the trial the respondent's attorney served upon the petitioner a Motion for Summary Judgment. The petitioner appeared in court the following day and informed the judge that he had only received the Motion for Summary Judgment the evening before. The petitioner also stated that he had witnesses present who could repudiate many statements made by the respondent in her motion. The judge dismissed the case in favor of the respondent assessing the petitioner $500.00 for legal fees. The petitioner filed a Motion for Reconsideration outlining false statements contained in the respondent's motion

which contradicted previous statements made by the respondent in previous deposition as well as in affidavits of witnesses who would have testified at the trial. Judge Keady who heard the case removed all legal costs against the petitioner and the Judge refused to press perjury charges against the respondent or grant the petitioner a trial.

The petitioner sought relief in the State Appeals Court which came down with a written decision that stated that the plaintiff was not entitled to relief because he had failed to use the word "object" when complaining to the Judge about being served the respondent's Motion to Dismiss on the evening prior to the trial. The petitioner quotes the Appeals Court: "However, the plaintiff did not object at the time to the

shortened period of notice. Cf." The petitioner then filed to the State Supreme Judicial Court who denied further appellate review.

The petitioner then filed in the federal court under Rule 9(b) of the Federal Rules of Civil Procedure because fraud had taken place in the state court system. The petitioner did state to the federal district court that he was entitled to settle these issues of controversary since he was denied due process in the state court system. Judge Woodlock of the lower federal court denied the petitioner the right to be heard in the federal court system since the Judge considered it barred by the doctrine of res judicata. The petitioner responded by filing an appeal to the Federal Appeals Court which also stated that the court was barred from hearing the case

under the doctrine of res judicata. The petitioner then filed a Petition for In Banc in which the federal court stated that they still lacked jurisdiction to review state court judgments if the relief requested is in the nature of appellate review. Please see Appendix A.

V.

REASONS FOR GRANTING THE WRIT

A. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO DELINEATE THE DOCTRINE OF RES JUDICATA VERSUS THE CONSTITUTIONAL RIGHT OF DUE PROCESS.

The First Circuit in this case has totally disregarded the principle of due process in regards to state court decisions based on unconstitutional acts. The petitioner states that

service of a Motion for Summary Judgment is unconstitutional if it is served upon the petitioner the evening prior to trial in the morning. The petitioner cannot prepare a proper answer due to the fact that the law libraries in the area are closed to the public and also it is impossible to contact witnesses and procure affidavits necessary to properly answer the respondent's Motion for Summary Judgment. Under the principle of due process the parties involved in a case must be given meaningful notice in a meaningful manner in order that they may present their case. The petitioner states that the state court system failed to meet this requirement of due process and, therefore, the petitioner is entitled to relief in the federal court system. The petitioner wishes to cite the fol-

lowing cases: Memphis Light, Gas and Water Division v. Craft, 98 S. Ct. 1554, 436 U.S. 1, 56 L. Ed. 2d 30, "Purpose of notice under due process clause is to apprise affected individual of, and permit adequate preparation for, an impending hearing. U.S.C. A. Const. Amend. 14," Orloff v. Cleland, 708 F. 2d 372. "Central meaning of procedural due process is that parties whose rights are to be affected are entitled to be heard at a meaningful time and in a meaningful manner. U.S.C.A. Const. Amends. 5, 14. "and Smith v. City of Pittsburgh, 585 F. Supp. 941, reversed 764 F. 2d 188, certiorari denied 106 S. Ct. 349, 88 L. Ed. 2d 297, "Although nature of due process hearing may vary depending upon importance of interest at stake, that hearing must be held at a meaningful time. U.S.C.A. Const. Amend.

14."

B. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO DELINEATE THE ROLE OF LOWER FEDERAL COURT INTERVENTION INTO STATE COURT PROCEEDINGS WHEN CIVIL RIGHTS VIOLATIONS OCCUR.

The petitioner states that the lower federal court does have jurisdiction over state court proceedings when the issue before the court is civil rights violations in the state court proceedings. The petitioner wishes to cite the following cases: Augustine v. Doe, 740 F. 2d 322, "In determining whether state action has violated individual's right to procedural due process, court must address two questions: first, it must decide whether state action has deprived individual of protected inter-

est, namely, life, liberty, or property, and, finding such deprivation, court must then determine whether state procedures available for challenging deprivation satisfy requirements of due process. U.S.C.A. Const. Amend. 14." and Rogers v. Okin, 738 F. 2d 1, "Where state procedures fall below minimum requirements of due process clause, those procedures are invalid; conversely, if state procedure rise above floor set by the due process clause, state could fail to follow its own procedures yet still provide sufficient process to survive constitutional scrutiny. U.S.C.A. Const. Amend. 14."

VI.

CONCLUSION

This case presents an important constitutional issue regarding due process and the state court system. This Court has an opportunity to clarify the boundaries of when the lower federal court should intervene in state court proceedings where constitutional violations have occurred.

Respectfully submitted,

Frank J. Camoscio

FRANK J. CAMOSCIO

Pro se

252 Hanover Street

Boston, Massachusetts 02113

DATED: October 13, 1989

Domenic Bruno
NOTARY PUBLIC
My Commission Expires May 29, 1992
Domenic Bruno
10/13/89

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Petition For Writ of Certiorari were mailed to David M. Crowley, 44 Bromfield Street, Boston, Massachusetts 02108, Attorney for Respondent Margaret Crowley, on this 13th day of September 1989.

I hereby certify that all the statements contained in my Certificate of Service are true and are made under the pains and penalties of perjury.

Frank J. Camoscio

Frank J. Camoscio
Pro Se

Domenic Bruno
NOTARY PUBLIC
My Commission Expires [illegible] 1992
Domenic Bruno
10/13/89

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 88-1982

FRANK J. CAMOSCIO,
Plaintiff, Appellant,

v.

MARGARET CROWLEY,
Defendant, Appellee.

Before

Campbell, Chief Judge,
Bownes, Breyer, Torruella and Selya,
Circuit Judges.

ORDER OF COURT

Entered July 26, 1989

Appellant has filed a petition for rehearing en banc. We conclude that this petition must be denied.

Appellant asserts that he raised

claims of due process and civil rights violations at the district court level in the context of his opposition to defendant's motion to dismiss. But jurisdiction must be pleaded specifically, not merely alluded to in a later memorandum. See Fed. R. Civ. P. 8(a)(1). Moreover, giving appellant the benefit of the doubt and construing the opposition to the motion as an amendment to the complaint, we would still conclude that dismissal of appellant's complaint was required under Fed. R. Civ. P. 12(b)(1). The additional assertions contained in the opposition are insubstantial, frivolous, and clearly raised solely in a baseless attempt to obtain jurisdiction. Bell v. Hood, 327 U.S. 678 (1946). Such claims cannot properly form the basis for federal subject matter jurisdiction. Furthermore, to

the extent that plaintiff's action represents an attempt to obtain federal court review of an unfavorable state court decision - seemingly, the main purport of the suit - such review is unavailable. It is well-settled that federal district courts have no authority to review state court judgments if the relief requested is in the nature of appellate review. Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). Only the United States Supreme Court may perform such review. 28 U.S.C. § 1257; Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281 (1970). This rule applies even when the action in the district court is said to involve federal constitutional challenges. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).

The petition for rehearing en

banc is hereby denied.

By the Court:

Francis P. Scigliano

Clerk.

[cc: Messrs. Camoscio, Crowley]

[NOT FOR PUBLICATION]

United States Court of Appeals
For the First Circuit

No. 88-1982

FRANK J. CAMOSCIO,

Plaintiff, Appellant,

v.

MARGARET CROWLEY,

Defendant, Appellee.

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
[Hon. Douglas P. Woodlock,
U.S. District Judge]

Before
Campbell, Chief Judge,
Torruella and Selya, Circuit Judges.

Frank J. Camoscio on brief, pro se.

David M. Crowley and Dolbec, McGrath, Crowley & White on motion for summary disposition.

May 30, 1989

Per Curiam. Plaintiff/appellant, Frank J. Camoscio, has filed a pro se appeal from the district court's dismissal of his complaint on grounds of res judicata. After carefully reviewing the record, we affirm the dismissal without reaching the substantive ground relied on by the court below.

Appellant sued defendant/appellee Margaret Crowley in state court, alleging that she had libeled him. The superior court granted summary judgment in defendant's favor, the Massachusetts Appeals Court affirmed, and the Supreme Judicial Court denied further review. Appellant then filed a complaint in federal district court alleging that Crowley had committed fraud, perjury, slander, and libel. He sought relief under Fed. R. Civ. P. 9(b), a procedural rule which furnishes no independent right of action.

Even construing appellant's complaint liberally under Haines v. Kerner, 404 U.S. 519 (1972), we conclude that the complaint is insufficient on its face to demonstrate the existence of subject matter jurisdiction. The complaint reflects an absence of diversity of citizenship between the parties and completely fails to state any federal or constitutional claim. Appellant's vain attempt to rely on Fed. R. Civ. P. 9(b), a civil rule which simply requires that allegations of fraud be pled with particularity, does not require a different result. Rule 9(b) does not create a federal cause of action for fraud.

On appeal, appellant attempts to raise for the first time issues of due process and civil rights, but those seem far-fetched, given the identity of the parties and the facts pleaded.

More importantly, no such issues were pled in the complaint or raised below. Accordingly, we will not consider these arguments for the first time on appeal. Clauson v. Smith, 823 F. 2d 660, 666 (1st Cir. 1987); United States v. Krynicki, 689 F. 2d 289, 291 (1st Cir. 1982).

Because the district court lacked subject matter jurisdiction, appellant's complaint was properly dismissed. Fed. R. Civ. P. 12(b)(1). We need go no further, and therefore, have no occasion to consider whether, as the district court ruled, the doctrine of res judicata barred appellant's attempt to relitigate his libel and fraud claims in federal court.

Affirmed.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 88-1982

FRANK J. CAMOSCIO,
Plaintiff, Appellant,

v.

MARGARET CROWLEY,
Defendant, Appellee.

ORDER OF COURT

Entered November 2, 1988

Appellee's motion for summary disposition is denied. Appellee may, if she chooses, rely on her motion for summary disposition and her reply to appellant's opposition to summary disposition in lieu of her brief on ap-

By the Court:

FRANCIS P. SCIGLIANO, Clerk

By: DANIEL F. LOUGHRY,
Chief Deputy Clerk.

[cc: Messrs. Camoscio and Crowley]

Handwritten decision dated August 16, 1988 by Douglas P. Woodlock, United States District Court Judge.

8/16/88 - ALLOWED, after consideration of plaintiff's opposition hereto. The plaintiff is shown, by the papers filed in connection with this motion, to have previously and unsuccessfully litigated the issues in the instant case in a state court action. The effort to obtain federal court review of, and collateral attack upon, the state court judgment is barred by doctrines of res judicata.

Douglas P. Woodlock

U.S.D.J.

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

No. 86-1200

FRANK J. CAMOSCIO

vs.

MARGARET CROWLEY.

MEMORANDUM AND ORDER

The focus of the plaintiff's homemade complaint was that he had been libeled and perhaps otherwise injured by a letter written by the defendant which indicated that the plaintiff's license to practice podiatry had been revoked by the Board of Registration in Podiatry. The defendant moved for summary judgment offering proof that the license had indeed been so revoked. The plaintiff offered nothing relevant in opposition, and the judge allowed the motion.

The defendant had served the mo-

tion the day before it was heard, and the plaintiff argues on the present appeal from the summary judgment that Mass. R. Civ. P. 56(c), 365 Mass. 824 (1974), has a ten-day notice requirement. However, the plaintiff did not object at the time to the shortened period of notice. Cf. Cefalu v. Globe Newspaper Co., 8 Mass. App. Ct. 71, 79 (1979). Moreover, the plaintiff subsequently filed various papers; the judge treated this submission as a motion to reconsider and did evaluate the proferred documents; and he finally denied the motion. The plaintiff, acting for the most part pro se, has persistently stated that his license was unjustly revoked; but the revocation stands, and the plaintiff's protestation does not alter the present case.

Accordingly, upon consideration

of the record appendix and briefs, it is ordered under rule 1:28 of this court that the following entry be made on the docket of the Superior Court in the above matter:

Judgment affirmed.

By the Court (Greaney, C.J., Kaplan & Smith, JJ.),

Warren L. Shield

Assistant Clerk

Entered: June 26, 1987